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Current Topics.

Legal Clinics.

ONE of the more practical of the recent contributions by the "Brains Trust" to popular discussion was given on 3rd November in answering a question as to whether a useful purpose could be served by the establishment in centres of population of legal clinics, composed of a few first-class lawyers and some advanced students, on the model, presumably, of health clinics. Dr. LESLIE BURGIN, M.P., himself a solicitor, referred to the work done by Citizens' Advice Bureaux in advising on the more simple and everyday problems arising out of the emergency legislation. Professor GILBERT MURRAY, speaking as a layman, observed that we all lived in a law abiding way under the law and yet few of us knew what the law was. Moreover, among those he knew, few resorted to the law, and he drew the inference that we lived in a law abiding way under a law of which we knew very little and which we used very little. Dr. CATHERINE GAVIN held that the establishment of legal clinics would increase litigation and encourage undesirable forms of bureaucracy. Commander A. B. CAMPBELL referred to the Jewish Beth Din as a sort of legal clinic. Mrs. HAMILTON compared the suggested legal clinics to the existing health clinics and did not think that an increase of bureaucracy would be bad if a useful service was performed. In summing up, Dr. LESLIE BURGIN emphasised that clinics such as Citizens' Advice Bureaux did not increase litigation, as they took no part in litigation or drafting of documents, but only gave advice. The "Brains Trust" is to be congratulated on a highly useful discussion, and if we may succumb to the temptation of adding anything, it is simply that even where "clinics" such as the Poor Man's Lawyers recommend persons to avail themselves of the Poor Persons Procedure, they do not thereby "increase litigation" in any bad sense, but tend to bring nearer the democratic ideal that the courts of justice shall be open to all, and not merely to those who can afford to litigate.

Trial by Jury.

ANOTHER legal topic which the "Brains Trust" discussed in their session on 3rd November was that of the historical development of trial by jury. Dr. LESLIE BURGIN referred to that mode of trial as a safeguard of personal freedom and a "bulwark of satisfaction" to the average person. Dr. CATHERINE GAVIN referred to the part played by the canon law of the church and, later on, of the craft and trade guilds as they developed, in the growth of trial by jury. The subject is instructive, as it illustrates the ancient growth of English democratic institutions. The old Saxon system of compurgation whereby a defendant could bring eleven men of the hundred to testify as to his character, may not have been without its influence on the later development of the jury system. Its direct descent, however, may be traced, so far as civil cases are concerned, to the "sworn inquest" introduced into England by William I, which was used by the Norman kings for administrative and fiscal purposes. In criminal proceedings, trial by jury dates back to the Lateran Council in 1215, when it abolished trial by ordeal. Wager of battle did not apply to criminal cases, as the king could not be challenged to fight. In Bracton's day the "inquest jury," which tried a criminal case after its presentation to the "hundred jury" were to some extent witnesses, and relied partly on their own knowledge. They might even be cross-examined by the judge as to why they gave their verdict, and the judge could disregard the verdict and impanel a new jury. Nowadays, there is a safeguard against the effect of local prejudice in the power to transfer criminal trials to the Central Criminal Court, but the knowledge of the average juryman of the circumstances of the everyday life of his peer who stands in the dock, or is a party to a civil proceeding, is still a "bulwark of satisfaction" to the average citizen.

A Centenary.

ON 27th October the Management and Administration Department, formerly known as the Office of the Master in Lunacy, attained its centenary. On 27th October, 1842, by a general order under 5 & 6 Vict. c. 84 (under which two permanent Commissioners in Lunacy were appointed) the office of the Clerk to the Custody was abolished, and his duties, together with the duties with regard to lunatics of the Masters Ordinary in Chancery were transferred to the new Commissioners. In 1846 these Commissioners were re-named Masters in Lunacy. Subsequently the number of Masters in Lunacy was reduced to one, and he is aided by an assistant master and three assistants to the master. The office staff has grown from four to 130 in the course of a century. In 1890 the number of cases was 1,200, and last year they were 24,347. This affords ample proof of the increasing confidence reposed by the public in this service. It is not one which suddenly sprang into being a hundred years ago. In 1339, or thereabouts, the Statute de Prerogativa Regis limited the King's jurisdiction over the estate of idiots or natural fools, whose profits he was to take, but for whom he was to find necessaries. A statute of 1540 set up the Court of the King's Wards, and provided that the residue of a lunatic's estate was to be paid over on his death to his personal representatives. In 1661 the exercise by this court of the royal prerogative was transferred to the Lord Chancellor. He was joined in 1851 by two Lords Justices of Appeal in Chancery, to whom the Sign Manual was directed. The Lord Chancellor and all the Lords Justices of Appeal now exercise the jurisdiction, and one of them constitutes the Judge in Lunacy. The present function of the Management and Administration Department of conducting inquisitions to determine whether grounds for the exercise of the royal prerogative have arisen, date back to the reign of EDWARD II, when inquisitions were held by escheators. These proceedings became too cumbrous, and 1842 was the year when the system was reformed and the Masters, then called Commissioners, were appointed. The work of a century has amply justified the reform.

The Forces and Legal Education.

A LITTLE advertised though comparatively new aspect of life in the Forces is provided by the various schemes of vocational and postal study courses which have been in operation for some time past. The War Office Correspondence Course Scheme is administered by A.E.3 War Office, a branch of the Directorate of Army Education, on behalf of the War Office, Admiralty and Air Ministry, and its facilities are available for all men and women, officers and other ranks, serving in the Army, Navy and Air Force in Great Britain, Northern Ireland, Iceland, Gibraltar and West Africa. While prisoners of war cannot be enrolled as students, copies of the study notes of the courses with the syllabuses are supplied to the Educational Books Department of the British Red Cross and St. John's Prisoners of War Organisation, through whom supplies are sent, on request, to the camps, with a number of text-books. Members of the Dominion Forces serving in the areas covered by the scheme can be enrolled on special terms for any of the vocational but not for the postal study courses. Up to the present it has only been possible to accept members of Allied Forces as students on similar terms for the vocational courses in engineering. Text-books are loaned to students in the case of Army and Navy students by the Services Central Book Depot and in the case of R.A.F. students by the R.A.F. Central Library. Both branches of the legal profession are co-operating through the agency of The Law Society, the Council of Legal Education and the Society of Public Teachers of Law with A.E.3 War Office in providing correspondence courses in legal subjects for members of H.M. Forces, and many solicitors and barristers are gladly giving their services gratuitously in the marking of students' test papers. Those who have done this work can testify to the pleasure they have experienced in the

almost uniform excellence of the test papers and the evident keenness and enthusiasm of all students to achieve something while this opportunity remains open to them. The revised scheme, which was issued to Army units on 17th October and was later issued by the Air Ministry and the Admiralty, shows that a fee of 10s. covers any or all of the courses in one group (e.g., law), and ample provision is made for the continuance, if desired, of the courses of students who are moved from place to place, unit to unit, or into hospital, or invalided out of the Service. The law course covers courses on contract, negotiable instruments, bankruptcy, tort, the English legal system, the sale of goods, company law, criminal law and conveyancing. The number of enrolments to date for the vocational law course is 2,321 out of a total of 25,234. Out of 11,581 enrolments for the postal study courses, 2,391 have been enrolled for the law courses. The figures for the different courses disclose the interesting facts that contract law is by far the most popular, with 543 enrolments, followed by criminal law with 458 enrolments and company law with 447. For the study of the English legal system there have been 407 enrolments, while for tort there have been only 252 enrolments. At the other end of the scale are the following figures: 104 for bankruptcy, 92 for the sale of goods, 58 for conveyancing and 30 for negotiable instruments. Degree of everyday interest and abstruseness probably play as big a part as any other factor in determining the proportions of these numbers. Amid all the talk and argument about planning for post-war life, the War Office, without much talk, has produced a tangible and substantial contribution to the solution of the problem.

Local Government Areas.

THE proposal put forward recently in certain quarters that the urban and rural district council should be abolished in favour of the county unit of local government, or even of larger units, has met with a somewhat mixed reception. Mr. C. SELLICK, writing to *The Times* of 30th October, points out that the more remote the control the less efficient or the more expensive does the administration become. He adds that it will be far more difficult to persuade professional men and business executives to take any part in local government if the authority is housed at some distance from their homes and businesses. The result would be that membership of authorities would be confined to the leisured classes, the retired business men and the paid trade union officials, to the exclusion of the young keen professional men and business executives. Mr. E. P. EVEREST, Chairman of the Executive Council of the Rural District Councils Association of England and Wales, made, in *The Times* of 29th October, a special plea for the rural district council. Rural district councils, he wrote, have set themselves to interpret administratively the way of life of the countryside; and there is not much wrong with a form of local administration which has provided in the sparsely populated parts of England and Wales piped water supplies to about 7,000,000 of the 10,000,000 people living there. Before the war, he stated, water carriage, sewerage and sewage disposal arrangements were in operation in areas covering about 75 per cent. of the rural population. Any transfer of the powers of rural district councils to larger units would be a blow at the democratic nature of local government. Real reform, he stated, would be the continuation and completion of the review or county districts, but enlarged to cover the compulsory adjustment of county boundaries which spill over into areas with which they have no real relationship. The outcome of the correspondence, as it appears to the impartial reader, is that it would appear to be wrong to depart from the line of development begun by the Local Government Act, 1929, for the revision of boundaries, and that every case of the extension of the powers or the boundaries of the larger unit at the expense of the smaller unit should be examined in the light of its own facts and its special bearing, if any, on the underlying and basic principles of all government, local or otherwise.

Paper Saving.

A RECAPITULATION of all the various devices suggested and ordained for the saving of paper must necessarily be wearisome, and propaganda for the achievement of an end which is essential to our salvation must not be allowed to overreach itself. There is, however, a careless and unthinking minority, even among solicitors, who have the reputation of being the most cautious of professional men. For them, constant reminders of their public duties must be forthcoming. To those who practise in the courts it is a constant source of amazement that there are still some who are not alive to the urgency of the paper situation, or are only half aware of it. Briefs and bundles of correspondence that are typed on one side of the paper or with double spacing and with wide margins are not so rare as they should be, and it is by no means uncommon to find that clerks have suddenly reminded themselves of their duties halfway through a series of documents. Now that it is an offence to use an unreasonable amount of paper for any document it may be expected that the bench will become increasingly alive to any extravagance, wherever it is apparent. Even the most careful cannot avoid absentmindedness at times, and propaganda which imprints our duties deeply into our conscious and even our subconscious minds is welcome to all of us. This type of propaganda was well exemplified in the exhibition staged by the Waste Paper Recovery Association in the ballroom of the Savoy Hotel on 13th, 14th and 15th October. The exhibition was called "Design for Economy—Paper in Battledress." At the opening, Mr. BRENDAN BRACKEN, the Minister of Information, remarked that the Waste Paper Recovery Association had done something which experts had thought to be quite impossible. It had increased the salvage of paper in Great Britain by 50 per cent. At the exhibition, publishing firms showed how paper is being saved on new books and magazines, and the 32-page of *The Times* of 1939 was contrasted with its present eight page issue. It served a most useful purpose, and in spite of the impressive successes already scored on the paper-saving front, exhibitions of a similar nature would undoubtedly lead to further achievements.

Recent Decisions.

In *R.* v. *Featherstone*, on 2nd November (*The Times*, 3rd November), the Court of Criminal Appeal (THE LORD CHIEF JUSTICE, TUCKER and CASSELS, JJ.), in dismissing an appeal on the ground that no substantial miscarriage of justice had taken place, held nevertheless that where a witness inadvertently gave an answer which was inadmissible in evidence owing to its being detrimental to the character of the accused, on counsel's application, the judge should discharge the jury and begin the trial before a fresh jury, and if the accused was undefended it was the duty of the judge to inform the prisoner that he had the opportunity and the right to submit that the trial should not proceed, and that he should make the application there and then if he desired to do so.

In *Wilkes* v. *Wilkes*, on 3rd November (*The Times*, 4th November), HODSON, J., held that where a husband had, for over a year of the statutory period required for desertion in order to obtain a decree of divorce, lived in the same house as his wife but occupied a separate bedroom and sitting room and had never during the statutory period entered his wife's rooms and never had his meals there, desertion for the statutory period was proved, and the wife was entitled to a divorce.

In *Butcher* v. *Poole Corporation*, on 4th November (*The Times*, 5th November), the Court of Appeal (THE MASTER OF THE ROLLS, DU PARCQ, L.J., and LEWIS, J.) held, in a case in which £50 damages for trespass had been obtained in the county court by a workman employed by the corporation, who, after having been given proper notice to terminate his employment and leave the house which he occupied by virtue of his employment, and having refused to leave, was ejected with no more force than was necessary, that even assuming in favour of the respondent that he was a tenant, the tenancy having terminated, the appellants did not "exercise a remedy by way of taking possession of property" or "by way of re-entry upon land" within s. 1 (2) (*a*) (ii) of the Courts (Emergency Powers) Act, 1939, but were merely exercising their proprietary right and that therefore the leave of the court was not needed. The court held that the class of subject-matter dealt with in subs. (2) was only concerned with matters defeating or taking away the rights of other parties, and only arose on default in the performance of an obligation.

In *Horton* v. *Owen*, on 4th November (*The Times*, 5th November), the Divisional Court (THE LORD CHIEF JUSTICE, TUCKER and CASSELS, JJ.) held (following *Minister of Agriculture* v. *Price* [1941] 2 K.B. 116) that at the hearing of an information under reg. 58A of the Defence (General) Regulations, 1939, for unlawfully failing to comply with a direction given to him on behalf of the Minister to take up a specified employment, it was not open to the magistrates to inquire into whether the defendants had acted reasonably in refusing to comply with the direction, but that all that they had to do was to inquire whether the direction had been properly given and whether the person directed had failed to comply with it.

In *Re Gourju's Will Trusts, Starling* v. *Custodian of Enemy Property*, on 5th November (*The Times*, 6th November), SIMONDS, J., held that where a testator left income of residuary estate on protective trusts for his widow, and by virtue of the Trading with the Enemy (Custodian) Order, 1939, and the Trading with the Enemy (Specified Areas) Order, 1940, no income could be lawfully paid to the widow as from 10th July, 1940, the widow's interest was thereby determined and a discretionary trust erected in its place in accordance with s. 33 of the Trustee Act, 1925. The case was said to be a test case, on which many others depended, and his lordship expressed the earnest hope that the welter of legislation which peace would bring would take into consideration such hard cases as this.

In a divorce case, the Court of Appeal (MACKINNON, GODDARD and DU PARCQ, L.JJ.), on 6th November (*The Times*, 7th November), held it had power in proper cases to review the exercise by a divorce court judge of the statutory discretion given by s. 178 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended, to refuse decrees in certain cases, that the court should be slow to interfere, but that it should and must interfere where the judge had exercised his discretion on the wrong grounds, or had failed to take relevant facts into consideration.

Some Points relating to Life Policies.

Family Provision and Saving of Duties.

IT seems probable that settlements in the old form to provide for dependents may become less in number in the times ahead of us, if only for the reason that there will be little to settle. But an admirable substitute seems to lie ready at hand in the form of life assurance. Do practitioners give quite sufficient thought to the facilities in this direction provided by the Married Women's Property Act, 1882, s. 11 (Scotland excluded), and the corresponding Married Women's Policies of Assurance (Scotland) Act, 1880 ?

The most material portion of the English Act runs :—

" A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts : Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid."

Then follow some further simple provisions for the appointment of trustees of the policy, and for giving a discharge to the company for the policy moneys.

So long as the terms of the policy (and they need not be stereotyped, but can be varied to meet the insured's wishes) keep the policy within the ambit of the Act, considerable advantages accrue, including—

(*a*) protection from creditors of the insured ; and

(*b*) saving of income tax and death duties.

As to (*a*), it seems to the writer, although he makes no claim to speak with an expert conveyancer's authority, that the words used are much more in favour of the insured and of his beneficiaries and less helpful to creditors, than s. 42 of the Bankruptcy Act, 1914, or s. 172 of the Law of Property Act, 1925, and that these two later Acts do not override the 1882 one. It will be seen that the words quoted prescribe no time limit, whereas the Bankruptcy Act names two-year and ten-year zones. If the creditor is to succeed he must prove that " the policy was effected and the premiums paid with intent to defraud the creditors of the insured." The insured may meet with financial disaster immediately after taking out the policy, but if he was acting honestly when he effected it, the creditors cannot disturb it. And note that the burden of proof is placed upon the creditor and that even where he succeeds he does not get the policy itself, or its surrender value, but only " a sum equal to the premiums so paid," which may of course be much less than the surrender value.

Obviously a single-premium policy is a better provision for the family than an ordinary annual-premium contract, if only for the reason that annual premiums may fail to be paid.

The policy may give a beneficiary a life interest only, if it is so desired, and may include, it is assumed, the usual anti-spendthrift clauses (in full or simply by reference to s. 33 of the Trustee Act, 1925).

A few years ago a somewhat unsteady client of the writer sold a large house and bought a smaller one, and was persuaded to invest the balance of the sale money in a single-premium policy under the 1882 Act in favour of his wife and children. A few months later he lost his mental balance (and most of his shirts) at " the dogs." His creditors did not seek to upset the policy, and the family are deeply grateful for the steps which were taken to safeguard them.

From the income tax standpoint, no doubt annual premiums are more helpful than a fully paid policy. For estate duty purposes, " aggregation " may be avoided by a contract under the 1882 Act. It is the practice of the Estate Duty Office to regard the policy moneys as non-aggregable with the rest of the insured's estate, under the proviso to s. 4 of the Finance Act, 1894, on the ground that the deceased " never had an interest in " the policy moneys, and it is to be hoped that such a merciful view may continue to be held, although the writer entertains some doubt whether it may do so, in view of the recent pronouncements by the Court of Appeal. For instance, Clauson, L.J., said in *In re Hodson's Settlement* [1939] Ch. 343 : " The person who planted a tree cannot be said never to have had an interest in its future fruit, though the fruit may not mature until long after he has, in virtue of his ownership of the tree and of all its future fruit, alienated the future fruit." The court was dealing with accumulations from a settled fund arising after the settlor had parted with the fund, and decided that, on the settlor's death, such accumulations were aggregable with the rest of the estate passing on the death, because the deceased could not be said to have " never had an interest in " such accumulations. Is it not open to argument that the proceeds of a life policy are " future fruit " of the insured's own tree, i.e., the money which he employed to pay the premiums ?

The following is a case to which the proviso to s. 4 of the Finance Act, 1894, clearly applies, but it now seems doubtful whether it can, in strictness, apply to any other class of case. A settles £10,000 on his daughter B for so long as her husband C is alive, and on C's death the capital to go to B's children. C predeceases B and her children. Estate duty is payable on C's death on the £10,000, but as an estate by itself, because clearly he never had any interest in it. The rate is 4 per cent. only, whereas if aggregation had applied the rate might have been as high as 65 per cent.

It is essential, if the said proviso is to apply, that the deceased never had, and never could have had, any beneficial interest in the property, so that if the saving of death duties is one of the objects in view, very careful attention must be given to the wording of the policy.

In *Cousins* v. *Sun Life Assurance Society* [1933] 1 Ch. 126, the Court of Appeal, reversing Eve, J., in the lower court, held that a policy taken out by a husband on his life under the 1882 Act for the benefit of his wife and containing the standard wording, conferred an absolute interest upon the wife, and when she died, before the husband, her executors successfully claimed the surrender value. In the lower court the husband had claimed it, and won, and if that decision had been confirmed by the Court of Appeal, it would have followed that the husband does, in all cases of policies similarly worded, have some possibility of interest, and aggregation would therefore apply on his death if he predeceased his wife.

In the fourth edition of " A Handbook on the Death Duties," by Mr. H. Arnold Woolley, a suggestion is put forward that no estate duty at all may be payable, on the ground that, from the commencement of the policy it is trust property, and therefore exempt on the insured's death under s. 2 (3) Finance Act, 1894.

As to nomination policies in favour of beneficiaries, not within the 1882 Act, it is clear that, generally speaking, the nominee does not take an absolute interest. The policy moneys can be claimed by the insured's executors or creditors. No trust is created as under the 1882 Act. (See *In re Englebach's Estate* [1924] 2 Ch. 348 ; *Clay* v. *Earnshaw* (1937), 2 All E.R. 548 ; *In re Sinclair's Life Policy* [1938] Ch. 799.) But in Scotland a party intended to benefit can sue, although not a party to the contract (*Carmichael* v. *Carmichael's Executrix* (1920), S.C. 195 (H.L.)).

In such cases, not only will duty be payable on the insured's death, but aggregation will apply because it could not be claimed that he " never had an interest " in the policy.

Nevertheless, the effect of the above cases can be, and has been, surmounted by carefully wording the policy (see *In re Webb* [1941] 1 Ch. 225 ; 1 All E.R. 321). On the special wording of that policy the court held that the insured did constitute himself a trustee for the named beneficiary (although the policy was outside the 1882 Act, because it was not one on the life of the insured himself, but on the lives of the beneficiaries).

If the words of the Act (quoted at the head of this article) are studied with care, it will be seen that the following are essential features of a policy within the Act and that if either of them are absent the Act will not apply :—

(1) The policy must be on the life of the assured himself (*Re Engelbach*, *supra*).

(2) The beneficiary must be the spouse or own child of the insured. For instance, an adopted child is not an object of the Act (*Clay* v. *Earnshaw* (1937), 2 All E.R. 548).

Practitioners are faced with particularly difficult considerations when dealing with claims for death duties in respect of life policies. There is no more involved subject to be found in the law books. Estate duty is attracted by the following three clauses of subs. (1) of s. 2, Finance Act, 1894 :—

Section 2 (1) (*a*) embraces all property of which the deceased was " competent to dispose," and this includes policy moneys, and also other kinds of property coming into existence at his death (see *Attorney-General* v. *Quixley* (1929), 98 L.J.K.B. 652).

Section 2 (1) (*c*) charges duty (by reference to older Customs and Inland Revenue Acts) on " money received under a policy of insurance effected by any person . . . on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

Section 2 (1) (*d*) charges duty on " any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other

person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased."

These provisions are, in sum, so wide that one would almost have thought it impossible that under any circumstances could policy moneys which become payable on a deceased's death escape estate duty in respect of that death. But the case of *Lord-Advocate* v. *Robertson (or Fleming)* [1897] A.C. 145, decided that where an insured assigned a policy by deed to an assignee, paid no premiums thereafter, and survived the assignment by three years, no duty is payable. The reasons seem somewhat artificial, and they are, shortly, that (1) no benefit arose *on the death*; it arose on the assignment, and (2) there could be no "keeping up" by the deceased for the benefit of any nominee or assignee, because no assignee was in existence when the deceased was paying the premiums. This, then, is the safest device for saving all duty.

If a policy is assigned for full consideration, no duty is payable on the assignor's death (see Finance Act, 1894, s. 3). And a family arrangement may constitute such consideration (see *Lethbridge* v. *Attorney-General* [1907] A.C. 19, and *Attorney-General* v. *Kitchin* (1941), 2 All E.R. 374). But the assignment must be an absolute one; a settlement will not do if under the terms of it the trustees are prohibited from dealing with the policy moneys until the settlor's death, because in that case a beneficial interest passes or arises on the death under the terms of the settlement, and as such interest was "purchased or provided by the deceased," estate duty is attracted by s. 2 (1) (*d*) of the Finance Act, 1894 (*Westminster Bank, Ltd.* v. *Attorney-General* [1939] Ch. 610). This case is interesting because it illustrates the only class of case in which estate duty is payable upon the value of the beneficiary's interest arising on the death instead of upon the full capital value. Under the terms of the settlement the beneficiary who took upon the death took a life interest only, and estate duty was payable only upon the value of the life interest. If the case had come within s. 2 (1) (*a*) or s. 2 (1) (*c*) of the Act, the full capital value would have attracted duty.

If the settlement is in such terms that the whole beneficial interest passes at once, and the settlor survives by three years, and pays no premium after the assignment, but lends the trustees money with which to pay the premiums, no estate duty or succession duty is payable on his death (*Lord-Advocate* v. *Hamilton* (1941), 20 A.T.C. 130). It seems possible that this decision may be altered, either by statute, or judicially, before very long, for it seems open to question whether lending the money does not amount to "providing in concert or by arrangement with" the borrowers. Where a settlement attracts succession duty or legacy duty (as the case may be), a difficult issue may arise as to who is "the predecessor" for the purpose of fixing the rate of duty (see *Att.-Gen. for Ireland* v. *Riall* (1906), 2 Ir. R. 122, and *Att.-Gen.* v. *Public Trustee* [1920] 3 K.B. 675). In the former case a husband insured his life and paid the first premium; the policy was then assigned to his marriage settlement trustees, and a relative of the wife covenanted to pay the premiums. Held that, on the husband's death the beneficiaries derived a succession from the husband, so that the lowest rate of succession duty was payable.

A policy to provide for payment of estate duty is liable to estate duty at full aggregation rate, and is not exempt from aggregation on the ground that deceased never had an interest in it (*Tennant and Others* v. *Lord-Advocate* [1939] A.C. 207).

Although a life policy may be worded so as to have all the effects of a settlement, it will not (it is thought) attract *ad valorem* duty. But there may be a difference in this respect between a policy under the 1882 Act (trust implied by the Act) and one not within the Act (trust created by the policy itself). The policy should state clearly (1) who is to give the company a valid receipt for the moneys, if surrendered during the insured's lifetime, and if not so surrendered; (2) the exact nature of the beneficiary's interest; (3) the parties to become entitled beneficially if the primary trust fails; (4) (if it is so intended) that the insured himself wholly parts with all beneficial interest and all possibility of having any such; (5) (if so desired, and the policy is not a fully paid one) that the insured undertakes to pay the premiums in due course.

The Ministry of Works desires to draw attention to the fact that when any change occurs in the particulars of a registered firm of builders notification should be given to the Chief Registrar (B. & C.E.), Ministry of Works and Planning, Sanctuary Buildings, 18, Great Smith Street, S.W.1. The certificate of registration should be returned at the same time for amendment. Circumstances in which such notification is necessary include: (*a*) change of name(s) of owner(s), trading name, or address; (*b*) change in constitution of business; (*c*) permanent or temporary closing down of business; (*d*) resumption of business; (*e*) formation of a group of builders, or other such amalgamation. Certificates of registration are the property of H.M. Government, and must be returned to the Ministry of Works on demand. Care should be taken to safeguard them against loss; the Chief Registrar should be notified immediately if a certificate is lost. Certificates must not be defaced or amended in any way, but must be returned to the Ministry of Works for any addition or amendment. They cannot be transferred to other persons.

A Conveyancer's Diary.

Settlements on Persons outside the Sterling Area.

THERE has recently been enacted an Order in Council, under the Emergency Powers Acts, 1939 and 1940, further amending the Defence (Finance) Regulations on a matter of interest to conveyancing practitioners. The order in question is 1942, S.R. & O. 2096, made on 14th October, 1942, and coming into force (art. 12) on 26th October, 1942. The provision in question is art. 7, which makes an insertion after reg. 3B of the Defence (Finance) Regulations, 1939. The new regulation is to be known as reg. 3BA and is as follows:—

"(1) Subject to any exemptions which may be granted by order of the Treasury no person shall, except with permission granted by the Treasury or by a person authorised by them or on their behalf, settle any property, otherwise than by will, upon any trust under which a person who, at the time of the settlement, is resident outside the sterling area will have an interest in the property, or exercise, otherwise than by will, any power of appointment, whether created by will or otherwise, in favour of a person who, at the time of the exercise of the power, is resident outside the sterling area.

"(2) A settlement or exercise of a power of appointment shall not be invalid by reason that it is in contravention of this Regulation, but this paragraph shall be without prejudice to the liability of any person to any penalty in respect of the contravention.

"(3) In this Regulation, the expression 'settle,' in relation to any property, includes any disposition, covenant, appointment, agreement or arrangement, whereby the property becomes subject to a trust (or in the case of a re-settlement) to a different trust, and for the purposes of this Regulation, a person shall be deemed to have an interest in property subject to a trust if he has any beneficial interest therein, whether present or future, vested or contingent, or falls within a limited class of persons in whose favour a discretion or power in respect of the property is exercisable under the trust."

It will be seen that this provision is very wide indeed; it appears to cover every possible equitable interest in property, however remote. It is so wide that, with the best will in the world, settlors and their solicitors may sometimes quite well not know whether it is being infringed by what they do.

The purpose of the provision is evidently to prevent the creation *inter vivos* of equitable interests in property in favour of persons not "resident" in the "sterling area." The conception of "residence" runs through a good deal of war-time financial legislation, and may well involve difficult questions of mixed law and fact. I hardly think that I can deal adequately with such questions here, and shall content myself with saying that I conceive that one is not necessarily "resident" where one is, but that, on the other hand, one can acquire a "residence" by having an intention to continue to live or carry on business in a given place on a basis less permanent than would give one a domicile in that place. To take a very simple example, a person may have been domiciled in London in 1940 and then have been dislodged by a bomb. If he finds somewhere to live outside London, he will at once become *resident* there, but unless he firmly decides not to return to London when it becomes reasonable and possible to do so, he will, I think, continue to be *domiciled* in London. The "sterling area" is, of course, defined for the purposes of the Defence (Finance) Regulations; but I think that the prudent solicitor will ask a friendly banker to tell him what places are in the "sterling area" from time to time rather than attempt to keep pace with the orders on the subject. The piece of information is one which a banker probably will have at his fingers' ends.

The new regulation is not quite absolute, since it does not apply to dispositions by will or the exercise of testamentary powers of appointment. It seems also that the Treasury contemplate making general exemptions of some sort as they have taken power to do so; further, the Treasury can license any specific transaction. I think that the practical course will be that, where a solicitor thinks that instructions given him by a client may fall within the mischief of the regulation, he should write to the Treasury with a draft of the proposed instrument and a statement of facts asking that, if and so far as necessary, a licence be granted. Such an approach will no doubt either elicit a licence, or the refusal of a licence, or a statement that no licence seems necessary. A correspondence of this sort will substantially protect the solicitor and his client against the danger of prosecution for acting upon it: prosecution is the only risk that is run, since para. (2) expressly provides that dispositions are not to be avoided if they contravene the regulation.

The class of interests affected by the regulation stretches beyond the ordinary conceptions of equitable interests. It covers, for instance, the objects of a discretionary trust or of a power of appointment. As it also comprises contingent interests it will often be necessary to look beyond the interests that are really likely to take effect. Thus, in creating a protective trust one must look to the residence not only of the principal beneficiary but also to that of every living person who could become an

object of the discretionary trust after a forfeiture. Under s. 33 (1) (ii) of the Trustee Act one must look not only to the principal beneficiary's spouse and issue but also to all those who would on his death be his statutory next of kin, since they have a contingent right to become objects of the discretionary trust if the spouse and issue become extinct. It will thus be seen that if the regulation is going to be read *au pied de la lettre* solicitors will have a good deal on their hands. On the other hand, though the regulation expressly extends to future interests, vested or contingent, it can only extend to those of persons who are actually *in esse* at the date of the settlement; for the prohibition is on creating interests in favour of persons "resident outside the sterling area," and an unborn person cannot be said to be "resident" anywhere at all. It is also to be observed that a person is deemed for the purposes of the regulation to have an interest in property if he has a "beneficial interest" therein. It thus appears that the regulation would not affect interests created in favour of persons in a fiduciary capacity. Whether the interest of persons who have a beneficial interest in a trust fund which includes an interest in another trust fund can be said to have a beneficial interest in the latter fund I do not know, but I should have thought that it was too remote.

The new regulation is, like so much else in our war-time legislation, capable of producing a good deal of worry and inconvenience if practitioners are to guard against every contingency in which it might operate. But in practice, no doubt, it will be made workable by our native common sense, which, I have no doubt, the Treasury will assist by its advice (and, if need be, its licence) in cases of any substantial practical difficulty.

Our County Court Letter.

The Contracts of Theatrical Producers.

IN *Terry* v. *Lauri*, heard at Lancaster County Court, the claim was for £82 1s. 9d. as damages for breach of contract. The counter-claim was for a similar amount for loss of reputation of the defendant's theatre. The plaintiff was a theatrical producer, and in September, 1941, he had provided a performance at the defendant's theatre for one week. Owing to the success of the show, the defendant asked the plaintiff to produce a show with the same artistes on the 6th October for three weeks. The plaintiff accordingly produced a show entitled "Pleasure Cruise," and the takings were £70 5s. 11d. for the first week. The agreement was that the plaintiff was to receive 60 per cent. of the profits and the defendant 40 per cent. For the first week, however, the plaintiff only received £25 on account, leaving £23 owing. In the second week the takings were £52 5s. 7d., and the defendant paid the plaintiff his share thereof, but refused to pay the balance from the first week. In the second week, the attendance was affected by a parliamentary by-election and by bad weather. The third week's show was cancelled by the defendant, but, on going to Bradford, the same show earned £204 in the first week and £200 in the second week. The loss of the third week's show in Lancaster had involved the plaintiff in a liability for the artistes' wages, viz., £54. The defendant's case was that the October show was unrehearsed, unproduced and lacked artistes. It was not so good as the show in September, particularly as two sisters, who were "billed" in a dancing act, were unable to appear. Their appearance would heve meant an increase of £40 in the takings. Owing to the plaintiff's failure to provide an adequate substitute for the dancing "turn," the defendant had withheld the balance from the first week. His Honour Deputy Judge R. R. Smylie was not satisfied that the absence of the dancing act had had such an adverse effect on the defendant's theatre as he alleged. Judgment was given for the plaintiff, on the claim and counter-claim, with costs.

Decision under the Workmen's Compensation Acts.

Blow on Elbow and Osteo-Arthritis.

IN *Worton* v. *Gibbons* (*Dudley*), *Ltd.*, recently heard at Dudley County Court, the applicant's case was that she was a brick moulder in the employ of the respondents. On the 29th January, 1942, the applicant had placed a brick on the ground, and, while raising herself from a stooping position, she had struck her elbow a sharp blow on the handle of the press. This rendered her dizzy, and she was given water by a workmate. In spite of increasing pain the applicant remained at work until the 26th February, when her arm became locked and she had to cease work. The respondents' case was that the applicant had not complained of continuous pain, and both her output and wages had been maintained during the month she had remained at work. The locking of her elbow had apparently occurred suddenly, and this was consistent with the "lighting-up" of an old-standing osteo-arthritis, as shown by X-ray photographs. Although the blow on the elbow might have accentuated the osteo-arthritis, the applicant was fit to resume her old work, after the three months which had elapsed between her cessation of work and this hearing. Any remaining limitation of movement in the elbow was due to the osteo-arthritis. By consent, His Honour Judge Caporn made an award of £30 and 25 guineas costs.

Landlord and Tenant Notebook.

Assignee of Term Covenanting with Lessor.

J. Lyons & Co., Ltd. v. *Knowles* (1942), 86 SOL. J. 323, shows how successive assignments of the term may be made to benefit a landlord. For the plaintiffs succeeded in recovering judgment for rent against an assignee of the term after he had himself assigned it, and in respect of a period after that assessment.

The lease contained (*inter alia*) the following two covenants: a covenant not to assign without consent, and a covenant that any assignment should contain a covenant directly with the lessor to observe the covenants in the lease. The defendant was first assignee and effect was given to the transaction by a tripartite deed in which he undertook to pay the rent reserved for the residue of the term. The second assignment (to a company) was carried out in the same way, and when the new tenants defaulted the plaintiffs brought their action.

The defence set up that there had been a novation, which impliedly released him; this, Asquith, J., held, was not made out, and the plaintiffs' contention that by stipulating for as many obligations as there were assigns (plus, incidentally, that of the original grantee) they had deliberately added to their common law rights was upheld.

If one of the tests of novation is to see whether the creditor consented to accept the liability of the new debtor and discharge that of the old (*Rolfe* v. *Flower* (1865), L.R. 1 P.C. 27), this result is not surprising and calls for little comment. And, novation being a subject not strictly within the purview of this "Notebook," it would be more fitting to use the occasion shortly to review the general position of qualifications of the right to alienate.

Apart from statute, the law may be said to have been in two minds. At times the notion that the tenant, having agreed to day rent, should be allowed to do what he liked, seems to have petermined the attitude of the courts; hence, as Lord Eldon put it in *Church* v. *Brown* (1808), 15 Ves. 258, covenants restricting alienation have "always been construed with the utmost jealousy to prevent the restraint going beyond the express stipulation." And in the 'twenties and 'thirties of the present century a series of decisions illustrated the effect of this attitude on the ingenuity of draftsmen who responded to the tendency to construe agreements as conferring licences rather than granting sub-tenancies by using such phrases as "not to assign or underlet or part with the demised premises or any part thereof, or part with or share the possession or occupation thereof or any part thereof without the consent," etc. (See *Jackson* v. *Simons* [1923] 1 Ch. 373.) Mere "part with possession of the demised premises or any part thereof" was held, in *Stening* v. *Abrahams* [1931] 1 Ch. 470, not to prohibit the granting of a licence to fix advertisement boards above a shop fascia.

On the other hand, courts have sometimes felt that the term being *ex hypothesi* but for a time, and the property reverting to to the landlord (if a freeholder) for all time, his desire to have some say in the matter of who was to use it was not to be frowned upon. This principle underlay Lord Eldon's later decision in *Hill* v. *Barclay* (1811), 18 Ves. 56, to the effect that equity would not relieve against forfeiture for breach of a covenant against alienation. In *Barrow* v. *Isaacs & Son* [1891] 1 Q.B. 417 (C.A.) this was applied when consent could, and would, have been obtained, the defendants being "people of the highest class in the City of London," and their sub-tenant being "of nearly equal position." Much the same occurred in *Eastern Telegraph Co., Ltd.* v. *Dent* [1899] 1 Q.B. 835 (C.A.).

The Conveyancing Act, 1881, s. 14 (6) (i), excluded "a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased" from the statutory restrictions on, and for provision for relief against, forfeiture which it introduced, and it was not till L.P.A., 1925, was passed that this exception was abolished. *Jackson* v. *Simons*, *supra*, was one of the last cases in which Lord Eldon's views on taking liberties with contract played a part.

But the Conveyancing Act, 1892, s. 3, now L.P.A., 1925, s. 144, put an end to attempts on the part of landlords to exploit the occasion of assignments or underleases requiring their consent. There is an implied proviso to the effect that no fine or sum of money in the nature of a fine (which includes, by virtue of the interpretation section—L.P.A., 1925, s. 205 (1) (xxiii)—a premium or foregift and any payment, consideration, etc.) shall be payable for or in respect of a licence or consent. It was too late to suggest that the covenant in *J. Lyons & Co., Ltd.* v. *Knowles* was affected by this provision, though any valuable consideration will constitute a fine, and the proviso is implied "unless the lease contains an *express* provision to the contrary."

The remaining statutory provision which I propose to mention is that of L.T.A., 1927, s. 19 (1), by which, this time notwithstanding any express provision to the contrary, a covenant against alienation without consent is deemed to be subject to a proviso to the effect that such consent is not to be unreasonably withheld. Whether the defendant in *J. Lyons & Co., Ltd.* v. *Knowles* could, when the lease was assigned to him, have objected to the tripartite deed on the strength of this enactment, is again a point which could not be gone into.

What the covenant to stipulate for a covenant was probably intended to anticipate was objections based on *Evans* v. *Levy* [1910] 1 Ch. 452. In that case the plaintiff, having acquired the last thirty-one years of a thirty-five-year lease, applied for the necessary licence to assign it, the proposed assignee being his wife. The landlord objected to an assignment to a married woman and demanded a covenant by the plaintiff to pay the rent and perform the covenants throughout the term. The covenant against alienation was qualified by "such licence not to be unreasonably or arbitrarily withheld," and the plaintiff successfully sued for a declaration that he was entitled to assign without accepting the stipulation. Eve, J., did, however, observe that it might not have been unreasonable to demand a covenant as surety for the proposed assignee.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Repairing Covenants.

Q. A has let premises, Greenacre, house and garden, to B, on a repairing lease which expires shortly. B says he cannot carry out the repairs as builders are engaged on "blitz" work in the vicinity. Will B be liable for damages under his covenants and/or does he have the protection of any emergency or other legislation?

A. There is no provision in the emergency legislation releasing B from his obligations under the repairing covenant in the lease. The only provision in emergency legislation dealing with anything comparable is s. 1 of the Landlord and Tenant (War Damage) Act, 1939, but it suspends the repairing obligation only where the premises comprised in the lease are affected by war damage, and then only in the circumstances specified in the section. In any case, it has no application where the premises comprised in the lease are unaffected by war damage, but neighbouring premises are damaged.

Ex-Soldier Landlord.

Q. A purchased his house in 1939 direct from the builder who had built it and A was the first occupant. He lived there until 1940, when he joined the Army and then let it. He has now been discharged owing to shell shock from the Army and desires to have possession of his house again as a residence. The Rent Act does not seem to help, since he acquired the house after 1937, but do you think the position is altered by reason of the house not then being built? I had an impression that there was some provision under the Armed Forces Act whereby a soldier on return to civil life could regain his house, but I am unable to find this provision. Can you tell me if, in fact, it exists?

A. The only provision is for reinstatement in employment. There is no provision for the restoration of his house to an ex-soldier who is a landlord. The fact of the house not being built in 1937 does not affect the position.

Requisition of Land.

Q. It appears that if an agricultural executive committee pursuant to the powers conferred upon them by the Cultivation of Lands Order, 1939, take possession of land under Defence Regulation 62 and the Minister, on the advice of the committee, certifies that at the time possession was taken the land was not being properly cultivated, the provisions of the Agriculture (Miscellaneous War Provisions) Act, 1940, apply, and possession of the land may be denied the owner for a period not exceeding three years from the end of the war, and when given up the owner may be called upon to make a payment to the Minister. What is the position if the committee, pursuant to the above order, take possession under Defence Regulation 51? Do the provisions of the Agriculture (Miscellaneous War Provisions) Act, 1940, apply so as to enable the owner to be denied possession of his land for three years as aforesaid? If not, when can the owner regain possession and what right of compensation has he in the meantime? It appears that unless the owner agrees the committee cannot, without the written consent of the Minister, take possession of land under either Defence Regulation 51 or 62. Is the Minister's consent given in any particular form, and should the committee's notice of intention to take possession be accompanied by a copy of the Minister's consent?

A. If possession is taken under reg. 51, the owner cannot be denied possession for three years after the end of the war. The owner can regain possession as soon as the requisitioning department cease to occupy the land. In the meantime his rights are governed by the Compensation (Defence) Act, 1939. The distinction is that reg. 62 is appropriate to land to remain in use as farm land, whereas reg. 51 is appropriate to land to be converted into aerodromes, gun sites or barracks. The question of the owner's consent will therefore not usually arise under reg. 51.

There is no prescribed form for the Minister's consent, but a copy should accompany the committee's notice. The absence of such copy would not, however, invalidate the notice.

To-day and Yesterday.

9 November.—At the Lord Mayor's banquet at the Guildhall on the 9th November, 1864, there were present Lord Chancellor Westbury, Lord Brougham and Monsieur Berryer, the great French advocate. Lord Palmerston's speech paid eloquent tribute to the last two. Of Brougham he said that he had "distinguished himself in every career of intellectual display," as an advocate, as a Parliamentary orator, in literature, "as having trodden successfully all the various paths of science." Of Berryer he said that he had attained the greatest eminence in his own country that he was known throughout Europe as being unrivalled in eloquence at the Bar and esteemed "for that dignity of character, for that elevation of mind, and for that nobleness of sentiment, which are essential, when coupled with eloquence and talent, to make the perfection of legal or any other character."

10 November.—On the 10th November, 1738, at a Court of Admiralty at the Old Bailey "James Buchanan, a sailor, was convicted of the murder of Michael Smith, fourth mate of the 'Royal Guardian,' in China. John Longdon, master of a collier, and one of his men were tried for running down a fishing brigantine on the coast of Holderness and murdering three of her crew who got on board his ship to save themselves when their own was sunk, but were both honourably acquitted and the evidence committed in court in order to be prosecuted for perjury."

11 November.—The eighteenth century had a sharp way with fraudulent bankrupts, and on the 11th November, 1761, John Perrott was hanged at Smithfield for not fully disclosing his effects. As a Ludgate Hill linen-draper he had worked up his credit by punctual payments and then embarked on a scheme of fraud. He ordered goods worth about £25,000, sold them secretly through an agent for ready money, and called a meeting of his creditors, saying he could not pay all he owed, but promising to acquiesce in anything they proposed. Though he was plausible and made a good impression, they decided to make him bankrupt, and when his accounts were examined, those for the past two years were found in a suspicious state of confusion. His explanations were so unsatisfactory that he was committed to Newgate, where he delivered a further account containing an item of over £5,000 as "expenses attending the connection I had with the fair sex." Indeed he was regularly visited by an elegantly dressed friend, a Mrs. Ferne, who came to the gaol in a chariot with a liveried servant and a maid. A chance encounter in Lincoln's Inn Gardens between one of his assignees and a disconsolate-looking woman who, when he spoke to her, turned out to be a maid dismissed by Mrs. Ferne, led to a search of the lady's apartments and Perrott's room in Newgate. Banknotes were found, known to have been paid for goods sold on his behalf, and his fate was sealed.

12 November.—Each year on the 12th November, "the morrow of St. Martin," the Chancellor of the Exchequer, in black and gold robes, presides at a sitting of the King's Bench, as successor of the extinct Court of Exchequer, to make up the lists of gentlemen eligible as sheriffs for the various counties in the following year, three for each county. Afterwards they go before the King in Council, who marks the selected name by pricking the document with a bodkin. Claims for exemption may be argued before the court, whose sitting dates from 1340, when it was enacted that the sheriffs should be chosen yearly by the Lord Chancellor, the Lord Treasurer, the President of the King's Council, the Keeper of the Privy Seal, and the Chief Baron of the Exchequer, with the two Chief Justices.

13 November.—On the 13th November, 1810, Captain John Davison, of the Royal Marines, was convicted at the Taunton Assizes of stealing a piece of muslin worth 30s. from the shop of Mr. Bunter, a mercer of the town. He had slipped it into his coat under cover of his silk handkerchief while the apprentice was showing him some goods. Several gentlemen gave him an excellent character but he was sentenced to transportation.

14 November.—In 1746 there was a public clash between a naval court martial sitting at Deptford and the Court of Common Pleas. When the court martial assembled on the 16th May, the President, Rear-Admiral Perry Mayne, announced that, the day before, a writ of *copias* issued out of the Court of Common Pleas had been served on him at the suit of a Mr. Fry, who complained of a sentence passed on him by a court martial in the West Indies, the Rear-Admiral having been one of the members of the court. The upshot was that the members of the court wrote to the Lords of the Admiralty complaining in extravagant terms of Chief Justice Willes, accusing him of violating the law and disregarding the security of the realm at a time when England was at war. Six months later, however, they wrote an apology, which on the 14th November was received in the Common Pleas and enrolled. Willes said that, though he might have required a private satisfaction, since the offence was public he preferred satisfaction in a public manner. He declared it might be said of the law: "*Magna est et praevalebit.*"

15 November.—On the 15th November, 1732, "in the Court of King's Bench, William Rayner was tried for publishing an infamous libel intituled 'Robin's Reign or Seven's the Main,' consisting of several scandalous verses under an hieroglyphical picture . . . and was found guilty."

Reviews.

A Concise Guide and Summary to the War Damage Acts, 1941–42. By Sir LANCELOT H. ELPHINSTONE, of Lincoln's Inn, Barrister-at-law. Second Edition. 1942. pp. viii and (with Index) 119. London : The Solicitors' Law Stationery Society, Ltd. 8s. 6d. net.

The passing of the War Damage (Amendment) Act, 1942, on 6th August, with its four schedules of amendments, some of them lengthy and difficult, and nearly all of them involving complications of reference to the 1941 statute, has rendered more essential than ever the provision of an authoritative and systematic guide to the Acts. The first edition of the present work filled that need so far as the principal statute was concerned. The present edition deals with all the amendments to the Act, all the rules and orders and all the announcements by the War Damage Commission (including the recently published Practice Notes) down to 9th October, 1942. The collection and rearrangement of this mass of material into an intelligible and logically ordered guide must have been a herculean task. Nothing has been omitted which will be useful to the practising solicitor and yet wonders of conciseness have been achieved. The integration of the 1942 Act, with its intricate amendments into the previous law has been successfully achieved. Opinions and forms approved by The Law Society and the War Damage Commission also form a useful addition to the text of the work. Another practical feature is the collection in the Appendix of lists of addresses of regional offices of the War Damage Commission, Deputy Commissioners and Regional Assessors of Builders' Accounts, etc., of scales of professional fees, and areas specified under s. 7 with the specified limits of amounts applicable to each area, as well as a number of forms. This is essentially a practical guide, and whether a solicitor wishes to discover what is the law or the practice under the Acts, e.g., the practice as to allowing payments of contribution to stand over or to be spread over a period in cases of hardship (p. 58) or the question of searches in the Land Registry and in local registries, which the Commission has undertaken and thereby exempted solicitors from making before giving certificates of title to claimants to value payments (p. 29) he will not look in vain for full guidance. The second edition amply justifies the high expectations held out by the excellence of the first edition and the name of its author.

Clarke Hall and Morrison's Law Relating to Children and Young Persons. Second Edition. by A. C. L. MORRISON, Senior Clerk of the Metropolitan Police Courts, assisted by L. G. BANWELL, Chief Clerk of the Marylebone Police Court. 1942. Royal 8vo. pp. xx, 360 and (Index) 40. London : Butterworth & Co. (Publishers), Ltd. 30s. net.

This comprehensive reference work is a second edition of both Clarke Hall and Morrison's " Law Relating to Children and Young Persons," which was published in 1934, and Clarke Hall's " Law of Adoption," published in 1928. It is not a book on infants, but on children, and that, as not only lawyers, but also probation officers, police officers, clerks of juvenile courts and other similar officials will appreciate, is a profound distinction. The scope of the work is therefore limited by the statutes and common law relating to child delinquency and welfare. All the relevant statutes and even government circulars are well set out under six headings : General (comprising, e.g., the Children and Young Persons Acts, School Attendance, Borstal, etc.), Infant Life Protection ; Adoption ; Guardianship ; the Legitimacy Act, 1926, and Emergency Legislation. As an example of the exceptionally high standard of annotation one cannot do better that cite the note on the word " ill-treats," which so admirably links up the common law with the statute law (p. 14). The preface is dated 31st March, 1942, so that it was probably too late to insert a note on *Rodger* v. *Varey* (1942), 1 All E.R. 567, as to the ordinary meaning of the word " child " in reg. 22 (11) of the Defence (General) Regulations, 1939 (dealing with the care of evacuated children). As supplements are to be issued, we respectfully suggest the inclusion of a short note on the billeting of evacuated children, and its effect on the question of guardianship. This work is indispensable to all who are concerned with the problems of children, their guardianship, education and welfare.

Notes.

If you wish to be compensated for the loss of stocks or business equipment by enemy action you must insure them under the Government war damage insurance schemes. *Without insurance there is no compensation.* If you have not insured consult your insurance company or broker at once.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held on the 4th November, grants amounting to £1,635 10s. were made to thirty-three beneficiaries. Mr. Gerald Keith, O.B.E. (London), was elected Chairman for the ensuing year, and Mr. Walter Maclaren Francis, M.A. (Cambridge), Vice-Chairman.

At the annual meeting of the Hampshire Incorporated Law Society, held in Southampton on Friday, 30th October, Mr. W. H. Abbott, of Southampton, was duly elected President for the ensuing year, and Mr. L. F. Glanville, of Portsmouth, Vice-President. The retiring members of the committee were re-elected, with the addition of Mr. K. F. Allen, of Portsmouth. Mr. L. F. Paris (Southampton) was re-elected Hon. Secretary and Treasurer.

Notes of Cases.

COURT OF APPEAL.

Fagot *v.* Gaches (No. 1).

MacKinnon, Goddard and du Parcq, L.JJ. 9th October, 1942.

Vendor and purchaser—Intending purchaser in possession pending completion—Tenant at will—Notice—Reasonable notice to remove property—Tenant setting up adverse title—Right to notice forfeited.

Plaintiff's appeal from a judgment of Tucker, J., dated 13th October, 1941.

The plaintiff had unsuccessfully sued for damages for trespass to land and for conversion of his stock. The defendant, he alleged, was his landlord, and he alleged that he had agreed to sell to him business premises and the business carried on there. Both Tucker, J., and the Court of Appeal held that there had been no concluded contract.

MACKINNON, L.J., said that no precise terms had been arranged for the plaintiff's entry into the premises, but he was to go into possession pending completion, sell the stock and take the profits. He would have to account for stock sold if the sale did not go through. Where an intending purchaser was let into possession pending purchase, there was a strong inference in the absence of evidence to the contrary that he was to be a tenant at will (*Coatsworth* v. *Johnson* (1886), 55 L.J.Q.B. 220), but the licensee must be allowed reasonable time to remove his property. The plaintiff did not ask for time to remove his property, but refused to quit, asserting an adverse title. The defendant was therefore entitled to eject him summarily. The plaintiff, however, was entitled to damages for the conversion of his stock.

COUNSEL : *Cartwright Sharp*, K.C., and *Astell Burt ; Gerald Gardiner.*

SOLICITORS : *Phœnix, Levinson & Co. ; C. Grobel, Son & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Fagot *v.* Gaches (No. 2).

MacKinnon, Goddard and du Parcq, L.JJ. 9th October, 1942.

Emergency legislation—Judgment for damages to be assessed—Order as to costs—Application for examination as to means—No leave required—Meaning of " proceed to execution "—R.S.C., Ord. 42, r. 32 ; Courts (Emergency Powers) Act, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (1) (c).

Plaintiff's appeal from order of Asquith, J., dated 22nd May, 1942.

The defendant obtained judgment on a counter-claim for damages, the amount to be ascertained by an official referee, and he was awarded one-third of the costs on the claim and counter-claim, costs to be taxed. On an application by the defendant under Ord. 42, r. 32, for an oral examination of the plaintiff as to his means (damages not yet having been ascertained) the master held that until an inquiry as to damages took place the judgment was one for costs only within s. 1 (1) (*c*) of the Act, and ordered an examination of the plaintiff as to his means. Asquith, J., affirmed this order. It was admitted before the master on the defendant's behalf that *Galbraith* v. *McKenna* [1941] Ch. 137 applied to make an application for an examination as to means a proceeding for which leave was required under the Courts (Emergency Powers) Act, 1939, s. 1 (1) (*c*).

MACKINNON, L.J., said that he disagreed with the decision of Simonds, J., in *Galbraith* v. *McKenna*, *supra*, and an application under Ord. 42, r. 32, was not within the words " proceed to execution on or otherwise to the enforcement of, any judgment for the payment or recovery of any sum of money." Another ground on which the orders of the master and of the judge were right was that so far as this was a judgment, the damages not having been ascertained, it was a judgment for costs only, and came within proviso (*c*) to s. 1 of the Act. The appeal failed.

GODDARD, L.J., agreed, and added that the mere fact that you are going to examine a debtor to find out whether he has any means on which execution may issue in the future did not fall within the words of the Courts (Emergency Powers) Act at all.

DU PARCQ, L.J., said that " to proceed to execution, or " to proceed to the enforcement of a project " was only a way of saying " to execute " or " to enforce." No one normally would say in this case that the party who made the application had proceeded to execution or enforcement of the judgment.

COUNSEL : *Cartwright Sharp*, K.C., and *Astell Burt ; Gerald Gardiner.*

SOLICITORS : *Phœnix, Levinson Walters & Shane ; C. Grobel, Son & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

Nelson *v.* Hannam.

Farwell, J. 14th October, 1942.

Mortgage—Lease with option to purchase reversion charged—Mortgagee exercises option and takes conveyance of fee—Mortgagor claims conveyance of reversion on payment of purchase price.

Adjourned summons.

By a building lease made in 1936 certain premises were demised to the defendants for ninety-nine years. The lease conferred on the defendants an option to purchase the freehold reversion for £5,377 10s., such option to be exercised before the 25th March, 1941. By a mortgage dated the 15th October, 1937, the defendants mortgaged the leasehold premises in favour of the plaintiff, and by a separate deed on the same date they assigned the benefit of the option to the plaintiff. On the 4th March, 1941, the plaintiff started proceedings for foreclosure and in due course an order for foreclosure *nisi* was made. In the meantime, on the last day on which the option was exercisable, it was exercised by the plaintiff. He duly paid the sum of £5,377 10s. in accordance with the terms of the option and the lessor conveyed the freehold reversion to him. By this summons in the foreclosure proceedings the defendant asked for a declaration that upon redemption of the mortgaged premises and payment of the purchase price

of the freehold reversion, with interest, they were entitled to require a conveyance of the freehold reversion to themselves.

FARWELL, J., said that it was contended that this case came within the principle of those authorities where it had been held that in the case of a mortgage of a lease, which was renewable, any renewal by the mortgagee was for the benefit of the mortgagor. That principle he considered had no application in the present case. Here the defendants, the lessees, had an option until the 25th March, 1941, of purchasing the freehold. That option they did not exercise. They were not entitled by paying the £5,377 10s. to get the freehold. The plaintiff was entitled to exercise the option. There was no hardship on the defendants in his acquiring the reversion. There was no suggestion of fraud. This was an attempt by the defendants to acquire something to which they were not entitled. The summons must be dismissed.

COUNSEL: *B. S. Tatham; L. M. Jopling.*

SOLICITORS: *E. M. Tringham*, for *Raymond E. Frearson*, Skegness; *Glover, Scott & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Home Remedies, Ltd.

Simonds, J. 26th October, 1942.

Company—Voluntary winding-up—Creditor petitions for compulsory order—Petition opposed by majority of creditors—No right to order—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 255.

Petition.

On the 5th May, 1942, the petitioning creditor obtained judgment against H., Ltd., for £750. Meetings of the shareholders and creditors of the company were held in August, 1942, at which resolutions were duly passed for the winding-up of the company and a liquidator was appointed. By this petition the judgment creditor sought an order for a compulsory winding-up. No reason was given why a compulsory order was sought. The petition was opposed by the liquidator and by a substantial majority of the creditors. The Companies Act, 1929, s. 255, provides: "The winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the court, but in the case of an application by a contributory, the court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding-up."

SIMONDS, J., said that the petitioning creditor claimed that the court was bound to make an order in his favour. In *In re James Millward & Co., Ltd.* [1940] Ch. 333, it was decided that on the true construction of s. 255 a creditor of a company in voluntary liquidation was, as between himself and the company, entitled *ex debito justitiae* to an order for the compulsory winding-up of the company. That decision had not abrogated the old rule of the court that, where a company was in voluntary liquidation, the court was bound to have regard to the wishes, not only of the petitioners, but of other creditors. A petitioning creditor no longer had to show that he was prejudiced by a voluntary winding-up, but between himself and the other creditors the old rule remained. Here, the great majority of the creditors were in favour of the continuance of the voluntary winding-up, and no suggestion had been made that the interests of any creditor would be prejudiced. The petition must be dismissed.

COUNSEL: *Humphrey King; Waite.*

SOLICITORS: *Godfrey, Teesdale & Co.; Murray Napier & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Westrik; Public Trustee *v.* The Middlesex Hospital.

Farwell, J. 28th October, 1942.

Revenue—Income tax—Pre-war will giving tax-free annuities—In 1940 *deed creating annuity fund and releasing residue executed—Whether provision for payment of annuities "varied"—Finance Act*, 1941 (4 & 5 *Geo.* 5, *c.* 30), *s.* 15.

Adjourned summons.

The testator, who died in 1930, by his will gave his residuary estate to his trustees upon the usual trusts for sale and investment. He directed his trustees to pay out of the income of the residuary trust fund seven small annuities free of income tax, and to pay the balance of the income to his wife during her life. After her death the capital of the trust fund was given to five charitable institutions. The testator's widow died in 1938. By a deed of appropriation and release dated the 6th August, 1940, made between the then surviving annuitants and the charities, it was agreed, pursuant to an order of the court sanctioning the arrangement, that the investments therein specified should be appropriated and retained by the Public Trustee as a fund to answer the annuities, and that the balance of the residuary trust fund should be distributed forthwith between the charities. By this summons the Public Trustee asked whether the annuities payable under the will ought to be paid at the reduced rate provided by s. 25 of the Finance Act, 1941. Section 25 provides: " . . . Any provision . . . for the payment . . . of a stated amount free of income tax . . . being a provision which (*a*) is contained . . . in any will or codicil . . . (*b*) was made before the 3rd September, 1939, and (*c*) has not been varied on or after that date shall . . . have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof."

FARWELL, J., said it was contended that the provision had been varied by reason of the deed of the 6th August, 1940. In his judgment that deed was not such a variation of the provision of the will as was referred to in s. 25. What the annuitants had done was to agree that they would forgo their charge on the whole of the estate, being content to rely on the annuity fund which was set aside. That provision was machinery to enable the residuary legatees to get an immediate payment. The provision referred to in the section was the provision in the will and that had not been varied. Accordingly, the annuities ought to be paid at the reduced rate prescribed by s. 25.

COUNSEL: *Wilfrid Hunt; Richmount; Jopling.*

SOLICITORS: *Freeman, Haynes & Co.; Vandercom, Stanton & Co.; Sheard, Breach & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Proctor *v.* Johnson & Phillips, Ltd.

Hilbery, J. 7th October.

Factories—Safety regulations—Exemptions—Proviso to exemption—Whether of substantive force—Contributory negligence and statutory negligence—S.R. & O., 1908, *No.* 1312.

This was an action under the Fatal Accidents Act, 1846, brought by a widow in respect of the death of her late husband, on whom she alleged that she was partially dependent, for damages for loss of dependency and for funeral expenses.

The plaintiff alleged that the deceased met his death while in the employment of the defendants through breach of statutory duty owed by the defendant company to the deceased as one of their servants on the occasion when he was killed. The defendants denied breach of statutory duty and alleged that the deceased himself was guilty of contributory negligence. The plaintiff, in the alternative, alleged breach of common law duty to provide a safe system of working and relied for evidence of that on the same matters. The defendants were the owners of large works where (*inter alia*) they offered facilities for the testing of electric cables, and for that purpose electric currents of high voltage were used. The testing took place in spaces known as "areas," and the accident happened in No. 5 area. Unless strict precautions were taken, it was highly dangerous to enter any of the areas. No. 5 area was fenced in with wire fencing, and there was an electrical system installed to ensure the safety of workers and to prevent danger. The system came into operation on the gate of an area being opened, so as to cut off the current in the area. When the current was on to the area a red light showed over the gate, and when it was off a green light showed in the same place. If the current from one transformer was on and one was off, both red and green lights showed over the gate. In addition the gate into the area was provided with a key and kept locked when the current was on, and the key was kept hung in a position near the gate. There were, moreover, rules for the protection of workers, and these were posted at the gates of the areas. If the deceased had intended to go into the area he knew, having been with the company for some years, that he had to report his intention to the test operator and obtain his permission so that the test operator could see that the current was off. There was conveniently placed in area No. 5 an earthing rod which was permanently connected to the earth, and which, when linked on to the high tension cable, would safeguard the worker from any injury. On the night before the accident No. 5 area had been used for testing cables. When the deceased arrived at work on the morning of the accident, he did not ask permission to enter No 5 area, and a little later he was found dead in the area; the gate was open and the green light was showing. The earthing rod was where it had been left the previous night, and apparently it had not been moved.

HILBERY, J., said that a point of nicety and difficulty arose in the construction of the Electricity Regulations made under the Factory and Workshops Acts, applicable to places where there was generation, transformation, distribution and use of electrical energy. The regulations were stringent, but under the statutory exemptions (No. 4) nothing was to apply to any process or apparatus used exclusively for . . . testing or research purposes provided that general precautions were taken. The question was whether compliance with the proviso to the exemption was of the same substantive effect as compliance with the regulation. It was said on behalf of the defendants that if there was non-compliance with the proviso the exemption was lost, and the defendants were then subject to the regulations, and here there were no complaints of infringement. On the whole, his lordship decided that the exemption with the addition of the proviso placed the defendant company under a substantive responsibility to comply with the terms of the proviso. The purpose of the regulations from which the exemption was granted was to put upon the employer a certain number of duties to ensure the prevention of danger, and the proviso was also inserted to prevent danger, notwithstanding the exemption in the case of certain processes. The defendant company were therefore under a duty to work the process with such apparatus and taking such precautions that danger would be prevented. The allegations of negligence were not made out, except that on that particular occasion there had been a failure to prevent danger. Without deciding the matter his lordship said he would assume that the duty of the defendants to take care was, as contended on behalf of the plaintiff, a continuing duty, and on that view there would be a *prima facie* case of breach, but he was satisfied that there had been contributory negligence by the deceased, and quoted the statement by Lawrence, J., in *Flower* v. *Ebbw Vale Steel, Iron and Coal Co., Ltd.* [1934] 2 K.B. 132 (approved by the House of Lords in *Lewis* v. *Denye* [1940] A.C. 531) that "in considering whether an ordinary prudent workman would have taken more care than the injured man, the tribunal of fact has to take into account all the circumstances of work in a factory, and that it is not for every risky thing which a workman in a factory may do in his familiarity with the machinery that a plaintiff ought to be held guilty of contributory negligence." For the same reason there was no breach of any common law duty to take care. The plaintiff's action therefore failed.

COUNSEL: *Berryman; Lynskey*, K.C.; *Pugh.*

SOLICITORS: *W. H. Thompson; Carpenters.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Shiers *v.* Shiers (King's Proctor Showing Cause).

Lord Merriman, P. 23rd July, 1942.

Divorce—Solicitor's duty—Warning petitioner as to disclosure of adultery.

Wife's petition for divorce, the King's Proctor showing cause why the decree should not be made absolute on account of undisclosed acts of adultery by the petitioner.

The PRESIDENT said that before he parted with the case he wished to say that though the petitioner was wrong in keeping quiet, knowing very well that it would have been awkward for her or it might have been awkward for her divorce case, if it had been known that she was living in adultery for some time, and though she was only too anxious that the question should not be asked, solicitors were, in his opinion, taking a grave responsibility upon themselves if they did not ask the question, or at any rate call the attention of their clients to the vital necessity of disclosing any adultery on their own part. The way in which that was done was a matter for a conscientious solicitor to decide for himself, but that it ought to be done in the interests of the client this case and many others showed beyond the slightest shadow of a doubt. That was the right practice, and that a solicitor was taking a risk if he did not do it, was shown very plainly by the course which the profession had settled for itself in connection with poor persons' divorces, where upon the application form was printed in large red type a caution that if there was any adultery it must be disclosed. Any solicitor dealing with a private client who did not take the same line was taking a grave risk which might lead to disastrous results for his client. In this case it would lead to this, that though the petitioner got a decree, she would pay all the costs of the King's Proctor.

COUNSEL: *Clifford Mortimer; F. Holroyd Pearce.*

SOLICITORS: *Collyer, Bristow & Co.*, for *Allan B. Lemon and Watts*, Salisbury; *The Official Solicitor.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Jacobs *v.* Jacobs.

Langton, J. 27th July, 1942.

Husband and wife—Post-nuptial deeds—Limited to personal covenants to pay—Whether a settlement—Whether terminated by death of husband.

Application by motion to vary a marriage settlement contained in two post-nuptial deeds dated respectively 12th January, 1904, and 21st March, 1905. The parties were married on 20th July, 1896, and the marriage was dissolved by divorce at the instance of the wife in 1911. The date of the decree absolute was 20th November, 1911, but in July, 1911, a petition for maintenance had been put on the file. On 28th November, 1911, the registrar reported and there was an adjudication by Sir Samuel Evans on 3rd February, 1912.

LANGTON, J., said that considerable difficulty had been created by the fact that both the registrar and the President appeared to have overlooked the consideration that Mrs. Jacobs could never become the widow of the respondent after the decree absolute had been pronounced, and that was partly why Mrs. Jacobs was now attempting to reopen the question of her marriage settlement. The sole question, however, arose on the report as to whether the post-nuptial settlements were extinguished by the death of Mr. Jacobs on 22nd April, 1940. The report stated accurately that the deeds of settlement were both drawn in terms which constituted a personal covenant by the husband that he or his executors would make certain payments to the wife during the joint lives of the spouses, and after the death of the husband would pay the wife certain annual sums for the remainder of her life "if she shall so long remain a widow and unmarried." The executors put forward the view, which was accepted by the registrar, that at the moment of the respondent's death his estate and executors became free from any further obligation or duty *qua* the covenant, and, since the settlement was limited to a covenant, there was no longer any settlement with which the court could deal. *Dorner* v. *Ward* [1901] P. 20, and *Bosworthick* v. *Bosworthick* [1927] P. 64, both decisions of the Court of Appeal, warranted the court in taking a very wide view of its powers to deal with all post-nuptial settlements. In *Bosworthick's* case (at p. 71) Scrutton, L.J., said: "The ordinary Chancery barrister would have recoiled from the proposition that a deed containing a covenant to pay £800 per annum was a settlement of property. There are a series of decisions in the Divorce Court to show that a much wider meaning has been given to the word 'settlement' than it has received in equity. In *Dorner* v. *Ward*, *supra*, this court held that a covenant to pay a yearly sum constituted settled property the disposition of which could be varied under the Acts empowering the court to vary settlements, and the court rejected the argument that the covenant merely creates a debt." Without these decisions his lordship would have been inclined to the opinion that a mere covenant to pay did not constitute a settlement, but the court had no option to deal with the deeds otherwise than as a settlement of property which was not in any way terminated by the respondent's death.

COUNSEL: *Noel Middleton*, K.C., *D. A. Fairweather; Bush James*, K.C., *P. B. Morle.*

SOLICITORS: *Ralph Bond and Rutherford*, for *Bartley, Cocks & Bird*, Liverpool; *Jacques & Co.*, for *T. J. Smith & Son*, Liverpool.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Read *v.* Read.

Henn Collins, J. 31st July, 1942.

Divorce—Petition—Leave to dispense with service—Respondent resident in enemy country—Leave refused—No means of communication—No vis major—Matrimonial Causes Act, 1857 (20 & 21 *Vict. c.* 85), *s.* 42.

Application, adjourned into court, under s. 42 of the Matrimonial Causes Act, 1857, by a husband petitioner in divorce proceedings on the ground of desertion, to dispense with service of the petition.

The applicant had previously unsuccessfully applied under R.S.C., Ord. IX, r. 14B, to dispense with service of the petition on the ground that the respondent was an "enemy" within the Trading with the Enemy Act, 1939, since she was resident in Germany.

HENN COLLINS, J., referred to *Cook* v. *Cook and Quaile*, 28 L.J., Probate and Matrimonial Cases, in which the court's power under s. 42 of the Matrimonial Causes Act, 1857, was exercised, and said that that was a case in which the respondent wife and the co-respondent had apparently sailed together for Australia, where all track of them had been lost, and no form of substituted service likely to come to their notice could be suggested. In the present case it was clear that no service could be effected, and that no form of substituted service, by advertisement or otherwise could be effected. It was also clear that if, in any way, notice of this suit could have come to the respondent, she could do nothing even to indicate whether she desired to defend or not. That had resulted, not from deliberate disappearance of the respondent, but by reason of *vis major*. That distinguished the case from *Cook* v. *Cook and Quaile*. Each case must be considered on its merits, and while the power had been exercised in proper cases, as, for instance, where a respondent had already obtained a decree in a German court, or where a wife who had already obtained a decree of separation, sought only to extend this relief to dissolution of the marriage under the Matrimonial Causes Act, 1937, and on their special facts in other cases, this was not a case in which the power should be exercised. The circumstances in which the parting of spouses took place was often highly controversial and it was worth observing that the respondent had been prevented from returning to the petitioner by *vis major*, even if she had been willing to do so, for the whole or some part of the years preceding the date of the petition. This was obviously a matter which would require argument. Summons dismissed.

COUNSEL: *F. H. Lawton.*

SOLICITORS: *Temple & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Littlewood *v.* Littlewood.

Pilcher, J. 16th October, 1942.

Divorce—Desertion—Refusal of sexual intercourse—Other disagreeable conduct—Living in same house—Whether constructive desertion.

Husband's petition for divorce on the ground of desertion for three years and upwards immediately preceding the date of the petition.

Relations between the parties had not been good since 1938, when the respondent left the home, but was persuaded to return, and did return, in June, 1938. There was one child of the marriage, aged fifteen, at the date of the hearing. In July, 1937, the respondent obtained employment at an evening institute and retained it against her husband's wish. It involved her being away from home in order to be at her work at 9 a.m. and to stay there until 9 p.m. In February, 1941, the respondent finally left the house.

PILCHER, J., said that there were two propositions which were well established by the cases. The first was that a mere refusal of sexual intercourse and a refusal to share the same bedroom did not in itself constitute desertion. It was also well established that the mere fact that parties continued to reside under the same roof was no ground for saying that there could not be desertion. The strongest case in which it had ever been decided that, although the husband and the wife continued to live under the same roof, the facts justified the court in coming to the conclusion that desertion was proved, was *Smith* v. *Smith*, 56 T.L.R. 97, in which, after a quarrel, the husband went to live with his mother in the basement of the house where the parties had lived and the mother cooked his meals and made his bed. The wife then slept on the ground floor and the husband on the first floor. The President on that decided that the husband had in fact deserted his wife. It would be taking the matter a great deal further than it had ever been taken if it were found in the present case that the respondent was guilty of desertion during the material period. The wife refused to continue to sleep in the same bedroom as the husband, and during the material period had never slept in the same bedroom. She had been laconic in conversation, had ignored him in the house. On the other hand, except for a woman who came in to clean about twice a week for short periods, the respondent had cooked the food when she had been in; she had reluctantly occasionally darned her husband's socks, had done some of the household shopping, and in substance there was still one household. The facts were, therefore, materially different from those in *Smith* v. *Smith*, *supra*. To pronounce a decree *nisi* would be going much further than any court had so far gone in the matter of what was sometimes called constructive desertion.

Decree refused.

COUNSEL: *The Hon. Victor Russell.*

SOLICITORS: *Joynson-Hicks & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. *v.* Barnes.

Viscount Caldecote, C.J., Humphreys and Tucker, JJ. 10th June, 1942.

Criminal law—Unsatisfactory verdict—Principles on which appeal allowed.

Appeal from conviction.

The appellant was convicted at Middlesex Sessions of receiving stolen property. He appealed on the ground that the verdict could not be supported having regard to the evidence.

HUMPHREYS, J., giving the judgment of the court, said that s. 4 of the Criminal Appeal Act, 1907, which provided that the Court of Criminal

Appeal should allow the appeal if they thought that the verdict of the jury could not be supported having regard to the evidence, had more than once been interpreted in that court as meaning, in effect, if the court thought that the verdict was, on the whole, having regard to everything which took place at the trial, unsatisfactory. It was useful to refer first to *R.* v. *Wallace* (1931), 23 Cr. App. R. 32, where it was agreed that nothing could be said against the conduct of the trial, but it was complained that the evidence, while consistent with guilt, was also, perhaps, consistent with innocence. Reference was there made to *R.* v. *Hart* (1914), 10 Cr. App. R. 176, where it was stated, as he (Humphreys, J.) stated now, that the fact that the judge at the trial was not satisfied with the verdict of the jury was not by itself ground for setting it aside, though it was an element to be taken into account by the Court of Criminal Appeal. The court described that case as one of those where it was difficult to specify the exact piece of evidence which left an unsatisfactory impression on the mind. Those cases showed that it was often, as was the case here, difficult to place upon a single legal ground the reason for the court's conclusion that the verdict of the jury was unsatisfactory. His lordship, having reviewed and criticised the evidence in detail, said that the deputy chairman, short of withdrawing the case from the jury, could not have put it more strongly for the appellant. The court had come to the conclusion that this was an unsatisfactory verdict. As had been said in *R.* v. *Wallace*, *supra*, the court had come to the conclusion that the case against the appellant had not been proved with the certainty which was necessary to justify a verdict of guilty. The appeal must be allowed.

COUNSEL: *Valetta*; *Alban Gordon*.

SOLICITORS: *Registrar, Court of Criminal Appeal*; *Director of Public Prosecutions*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Practice Note.

In the High Court of Justice.
Probate, Divorce and Admiralty Division.
(Probate.)

The President has directed the following procedure:—

Grants of Representation where the persons primarily entitled thereto are on war service abroad or prisoners of war.

If the person by law entitled to a Grant of Representation is on war service outside the United Kingdom or is a prisoner of war, application may be made *ex parte* upon affidavit to a Registrar of the Principal Probate Registry, whatever the amount of the estate, for an Order that a grant be made to some other person, where possible the person next entitled and, failing him, a person with an inferior title, for the use and benefit of the absentee and limited until he shall apply for and obtain a grant. Such Order shall be made under Section 162 of the Supreme Court of Judicature (Consolidation) Act, 1925, as amended by Section 9 of the Administration of Justice Act, 1928, and shall provide that a Declaration of the estate be filed and that the sureties to the Bond justify.

Admission to Probate of a copy of a Will where the original Will is outside the United Kingdom.

Where an original Will is elsewhere than in the United Kingdom and cannot be obtained for admission to Probate in England, the Registrars of the Principal Probate Registry may accept a copy of it, if satisfied as to its authenticity, and may make an Order for the admission of such copy to Probate limited until the original Will or a more authentic copy thereof is lodged in the Principal Probate Registry or a District Probate Registry, as the case may be.

Presumption of Death.

Where the gross estate of a person who is believed to be deceased does not exceed £1,000 in value, the Registrars of the Principal Probate Registry may make an Order giving leave to swear that death occurred on or since a certain date.

H. F. O. NORBURY,
Senior Registrar.

Llandudno.
6th November, 1942.

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 2241–2243 (as one document). **Consumer Rationing** (No. 15) Order, Oct. 31; Coupon Banking (No. 2) Directions, Oct. 31; Consumer Rationing (No. 8) Order, 1941, Order, Oct. 31, amending certain licences.

E.P. 2157. **Control of Photography Order** (No. 5), Oct. 19.

E.P. 2230. Control of Rubber (No. 16) Order, 1942. Direction No. 1, Oct. 28.

E.P. 2234. Control of Rubber (No. 18) Order, Oct. 29.

No. 2185. **Customs.** Export of Goods (Control) (No. 41) Order, Oct. 26.

E.P. 2212. **Defence** (General) Regulations (Isle of Man), 1939. Order in Council, Oct. 14, substituting a new regulation for 26A and adding regs. 28 and 29.

E.P. 2211. Defence (Recovery of Fines) Regulations (Isle of Man). Order in Council, Oct. 14.

E.P. 2197/S. 54. Defence (War Zone Courts) (Scotland) Regulations, 1940. Amendment Order in Council, Oct. 22.

E.P. 2214. **Domestic Furniture** (Control of Manfuacture and Supply) (No. 2) Order, Oct. 27.

E.P. 2210. Domestic Pottery (Manufacture and Supply) (No. 3) Directions, Oct. 27.

E.P. 2123. **Employment in Essential Undertakings in Ecuador.** Order, Oct. 20, 1942, under reg. 58 AC of the Defence (General) Regulations, 1939.

E.P. 2267. **Essential Work** (Merchant Navy) (Amendment) Order, Oct. 26.

E.P. 2253. **Feeding Stuffs** (Rationing) Order, 1942. Directions, Nov. 2.

E.P. 2258 Feeding Stuffs (Regulation of Manufacture) Order, 1942. Amendment Order, Nov. 3.

E.P. 2240. **Food Transport Order**, 1941. Order, Oct. 30, amending Directions, May 11.

E.P. 2256. **Motor Fuel** (Hire Service) (No. 2) Order, Nov. 2.

E.P. 2257. Motor Fuel Rationing (No. 3) Order, Nov. 2.

No. 2195. **National Service.** Order in Council, Oct. 22, approving Proclamation directing that certain British subjects shall become liable to be called up for service.

E.P. 2244. **Navigation Order** No. 19, Oct. 28.

No. 2200. **Road Traffic and Vehicles.** Motor Vehicles (Authorisation of Special Types) (Amendment) Order, Oct. 16.

No. 2233/S. 56. **Session,** Court of, Scotland. Procedure. Act of Sederunt Oct. 13, anent Free Legal Aid in the Court of Session to members of H.M. Forces.

E.P. 2220. **Therapeutic Substances** (Temporary Provisions) Order, Oct. 21.

E.P. 2223. **Transport of Waste Paper Direction,** Oct. 28.

E.P. 2222. **Wireless Telegraphy Emergency Apparatus** (Merchant Ships) Order, Oct. 24.

PROVISIONAL RULES AND ORDERS, 1942.

Juvenile Courts, England. Juvenile Courts (Constitution) Provisional Rules, Oct. 19.

Supreme Court, Northern Ireland. Procedure. Order of the Lord Chief Justice of Northern Ireland, Oct. 20.

Road Traffic and Vehicles. Motor Vehicles (Construction and Use) (Amendment) (No. 7) Provisional Regulations, Oct. 19.

Honours and Appointments.

The Lord Chancellor has appointed Sir RALPH WEDGWOOD, C.B., C.M.G. (Chairman), THE EARL OF DROGHEDA, C.M.G., His Honour Judge FINNEMORE, Mr. W. A. GILLETT, Mr. G. E. A. GREY, M.C., The Hon. Mr. Justice HODSON, M.C., Mr. L. S. HOLMES, The Hon. Mr. Justice LEWIS, O.B.E., Mrs. E. M. LOWE, Mr. J. G. TRAPNELL, K.C., and Sir CLAUD SCHUSTER, G.C.B., C.V.O., K.C., to be a Committee to consider the existing facilities in England and Wales for the instituting and trial of matrimonial causes outside London, and to report whether it is desirable to increase the facilities, and, if so, what rearrangements of the present system are desirable.

The Lord Chancellor has appointed The Rt. Hon. THE LORD RUSHCLIFFE, G.B.E. (Chairman), Mr. G. E. A. GREY, M.C., Mr. G. S. POTT, Sir CLAUD SCHUSTER, G.C.B., C.V.O., K.C., Mr. DAVID SMITH, Mr. W. P. SPENS, O.B.E., K.C., M.P., Mr. L. DUDLEY STAMP, Mr. A. H. WITHERS, and Mr. I. D. YEAMAN to be a Committee to consider one of the recommendations made by the Committee recently presided over by Lord Justice Scott, viz.:—

"238. *Registration of Title.*—We recommend that registration of title should be made compulsory over the whole of England and Wales.

"We recognise that the extension of compulsory registration of title will, for reasons of staff and administration, take some time, but it is important that it should be completed within five years."

And to consider whether it is practicable to give effect to it at the present time, and, if universal registration of title to land is not immediately possible, to report in what localities and by what stages compulsory registration on sale can best be brought about.

The Lord Chancellor has appointed Mr. WALTER CRADOC DAVIES to be the Registrar of Portmadoc and Blaenau Festiniog and Pwllheli County Courts as from the 7th November, 1942. Mr. Davies has been Acting Registrar of these courts since the 15th May, 1939, and was admitted in 1904.

The Board of Trade have appointed Mr. P. EKE to be Assistant Registrar of Companies and Assistant Registrar of Business Names in place of Mr. A. D. Scott, promoted.

In consequence of the appointment of Mr. G. B. McClure, Senior Prosecuting Counsel to the Crown at the Central Criminal Court, as the Judge of the Mayor's and City of London Court, the Attorney-General has made the following appointments:—

Mr. L. A. BYRNE to be Senior Prosecuting Counsel; Mr. A. E. HAWKE to be Second Senior Prosecuting Counsel; Mr. T. C. HUMPHREYS to be Third Senior Prosecuting Counsel; Mr. G. S. HOWARD to be First Junior Prosecuting Counsel; Mr. H. ELAM to be Second Junior Prosecuting Counsel; and Major J. C. MAUDE to be Third Junior Prosecuting Counsel.

Lord Justice LUXMOORE has been appointed Treasurer to the Honourable Society of Lincoln's Inn for the year beginning 11th January, 1943, in succession to Mr. Justice Atkinson.

Mr. A. E. T. HINCHCLIFFE, LL.B., of the firm of Messrs. Armitage, Sykes & Hinchcliffe, solicitors, Huddersfield, has been elected President of the Huddersfield Law Society for the current year. This is the second time Mr. Hinchcliffe has received the honour, as he was elected President of the Society some twelve or thirteen years ago.